

its averments and the light thrown on them by the relief prayed in order to determine whether in any substantial manner whatever it involved the construction or application of the Constitution or laws of the United States within the criteria embraced by the established rule which we at the outset stated. Instead of following the order of the twenty-four paragraphs which the bill contains, we rearrange and group them under five headings, omitting many redundancies of statement, but leaving out nothing which can throw light upon the cause of action relied upon.

(a) *The parties.* The complainant was alleged to be a citizen of Kentucky and the defendants, Whiteside, Alexander and Tallas, were alleged to be citizens of the State of Minnesota and inhabitants of the district in which the suit was brought.

(b) *The grievances complained of.* It was alleged that the complainant owned land under patents from the United States on the Minnesota side of the stretch of water at the point to which we have referred, that the defendant, Whiteside, under title acquired also from the United States, owned land on the Wisconsin side, Big Island, that Alexander, either in his own right or in connection with Whiteside, claimed some land on the Wisconsin side and resulting riparian rights, and that Tallas had taken possession of a part of the small or emerging island, erected a small structure thereon and without right in law was asserting ownership therein, the land never having been disposed of by public authority. It was averred that both Whiteside and Alexander by virtue of their shore ownership were asserting riparian rights crossing the new or government channel to the old or original channel embracing what remained of the emerged island and that Tallas by virtue of his possession of the island which remained was asserting the right to hold it as owner.

(c) *The rights asserted.* Averring that the stretch of water was a part of Lake Superior, in substance it was

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asserted that as the complainant owned shore land on the Minnesota side there existed riparian rights extending out to the center of the channel flowing through the stretch of water, securing to the shore owner the consequent right of direct access to such channel and this right it was in substance alleged embraced the power not only to extend to the old channel, but to the new navigable channel constructed in improvement of navigation by the United States and to enjoy riparian rights coterminous therewith, and that therefore the asserted rights by Whiteside, Alexander and Tallas were in conflict with such right upon the part of the complainant and cast a cloud upon his title giving him the right to equitable relief.

(d) *The legal grounds asserted as the basis of the relief prayed.* The bill alleged the historical fact of the original ownership by Virginia of the territory in which the lands in controversy were embraced, of its passing to the Confederation as a part of the vast domain ceded by Virginia, of the adoption of the Northwest Territory Ordinance in 1787, the stipulation contained in that ordinance that "the navigable waters leading into the Mississippi and St. Lawrence rivers, . . . shall be common highways and forever free as well to the inhabitants of said Territory as to the citizens of the United States and those of other States that may be admitted into the Confederacy, without any tax, impost or duty therefor." The bill further referred to the act of Congress of May, 1796, providing for the sale of lands within the Northwest Territory, including the lands in question, reciting the provision therein "that all navigable rivers within the territory to be disposed of by virtue of this act, shall be deemed to be and remain public highways and that in all cases where the opposite banks of any stream, not navigable, shall belong to different persons, the stream and the bed thereof shall become common to both." It alleged the subsequent carving out of said territory of the States of Ohio, Indiana, Mich-

igan, Wisconsin and part of Minnesota and the reservation in the Enabling Acts preserving the navigable waters bordering upon the same as common highways and extending concurrent jurisdiction to the States bordering thereon. Proceeding, the bill alleged the boundaries of the two States of Wisconsin and Minnesota as stated in the Enabling Acts to which we have referred, including the line of the main channel of the St. Louis River and the center of Lake Superior at the points and as described in the statement which we have previously made. It alleged that under the laws of Minnesota the riparian rights extending to the center of the main navigable channel were valid as asserted by the complainant and in practice had been recognized by the exercise of taxing and other powers. So far as the United States was concerned, growing out of the averments as to the formation of the Northwest Territory and of the States just referred to, it was alleged:

"That in the preservation of public rights on such navigable waters, where the same constitute state boundaries, it was the intent of the Federal Government and of the States to forever maintain and preserve the rights of the respective States and the citizens thereof, to have access to the navigable and navigated channels of such boundary waters and among the most ancient and important rights of private owners, incidental to the ownership of the shore lands abutting upon such boundary waters, is the right to wharf out to and have access to the navigable and navigated channel of such waters from such shore lands, and to have connection from such shore lands, throughout the extent thereof, with commerce upon such navigable and navigated part or channel of such waters, subject always to the paramount control over the whole of such waters by the United States."

It was charged that the emerging of the small island opposite the land of the complainant had occurred after

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the survey, sale and patent of complainant's land by the United States. In addition the bill charged that under the power of the United States to regulate commerce, harbor lines had at various times been established which extended from the respective shores to the old channel before the new one was constructed and that under the plans approved by the Secretary of War for the new work it was contemplated that harbor lines should extend from the respective shores to that channel.

(e) *The relief prayed.* The prayer was that the riparian rights of the complainant be recognized and enforced from the shore out to the new navigable channel created by the work done by the United States, and that all rights of the defendants as riparian owners which they asserted to extend across the new channel over to the old channel be declared to be invalid and that they be restrained from asserting or enforcing them.

Coming to test these averments we fail to perceive any ground for holding that the rights asserted rested in any degree whatever upon a substantial claim under the Constitution or laws of the United States or by any possibility involved the construction or application of any law of the United States for the following reasons: *First*, because as to the claim of riparian rights on the navigable waters in question it was long since affirmatively settled that such claim solely involves a question of state law and therefore at the time the bill was filed it was not open to contend to the contrary. *Barney v. Keokuk*, 94 U. S. 324; *Hardin v. Jordan*, 140 U. S. 371; *Grand Rapids & Ind. R. R. v. Butler*, 159 U. S. 87; *Devine v. Los Angeles*, 202 U. S. 313. *Second*, because the mere fact that both parties, the one holding on the Wisconsin shore and the other on the Minnesota shore, had acquired the property by them held from the United States, it is also affirmatively settled, in no way changes the situation. *Blackburn v. Portland Mining Co.*, 175 U. S. 571; *Florida Central &c. R. R. v.*

*Bell*, 176 U. S. 321; *Shoshone Mining Co. v. Rutter*, 177 U. S. 505; *Shulthis v. McDougal*, 225 U. S. 561, 569. *Third*, because so far as the references in the bill to the organization of the Northwest Territory and to the various provisions relating to navigable waters are concerned, however interesting they may be historically, we can see not the slightest ground for the contention that they were controlling or in any way could influence the question of the nature and character of the riparian rights enjoyed under the state law by the complainants. *Fourth*, because we can discover in the averments of the bill no substantive statement indicating that it was contended to the contrary, unless it be that such purpose could be implied as the result of the general averments of the bill which we have quoted concerning the general intent of Congress to preserve free navigation. But if we were to indulge in such assumption the result would not be different, as the averments in question make no reference to any specific legislation of Congress which would have the slightest influence upon the determination of the existence of the riparian rights which the bill asserted. *Fifth*, because we are clearly of the opinion that the mere fact that Congress in the exercise of its power to improve navigation directed the construction of the new channel affords no basis whatever for the assumption that thereby as a matter of Federal law rights of property, if secured by the state law, were destroyed and new rights of property under the assumption indulged in incompatible with that law were bestowed by Congress. And especially are we constrained to this view by the fact that there is no question here of any interference with work done by the United States under its paramount authority to improve navigation or any attempt to render the result of that work inefficacious. This will be lucidly illustrated by considering for a moment the action of both the courts below, since neither questioned the paramount authority

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and right of the United States in aid of navigation to construct the new channel or concerned themselves with any real or imaginary impediment to navigation. This is at once demonstrated by considering that the only difference between the two was the conclusion in the trial court that the effect of constructing the new channel was to extend the riparian rights over and across the old channel to the new, irrespective of the rights of property changed or destroyed thereby, because the new channel was to be treated not as a new work but as the gradual and natural modification of the old, while the court below reached a directly contrary conclusion.

Finally we are of opinion that the question whether the stretch of water and the channel through it be treated as a part of Lake Superior as asserted by the complainant, or be considered at the point in issue as a mere continuation of the St. Louis River as asserted by the defendants (a view held by both the courts below), is wholly negligible for the purpose of determining whether a substantial Federal question was alleged justifying our taking jurisdiction of the cause.

As from what we have said it results that our opinion is that there is no substantial ground for concluding that the jurisdiction of the District Court rested upon any assertion of Federal right, irrespective of diverse citizenship, justifying our review of the court below, it follows that the appeal must be and it is

*Dismissed for want of jurisdiction.*